

APPEAL NO. 111848  
FILED FEBRUARY 13, 2012

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 28, 2011, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 16th quarter. The appellant (carrier) appeals the hearing officer's determination of the claimant's entitlement to SIBs for the 16th quarter. The appeal file does not contain a response from the claimant.

DECISION

Reversed and rendered.

The parties stipulated that the claimant sustained a compensable injury on [date of injury], which resulted in an impairment rating of 15% or greater; the claimant has not commuted any portion of the impairment income benefits; and the qualifying period for the 16th quarter of SIBs was from May 12 through August 10, 2011.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142. Section 408.1415(a) states that the [Texas Department of Insurance, Division of Workers' Compensation (Division)] commissioner by rule shall adopt compliance standards for SIBs recipients 28 TEX. ADMIN. CODE §§ 130.100-130.109 (Rules 130.100-130.109), effective July 1, 2009, govern the eligibility of SIBs.

The claimant's theory of entitlement to SIBs for the 16th quarter is active participation in a vocational rehabilitation program (VRP). Section 408.1415(a)(1) provides that to be eligible to receive SIBs, a recipient must provide evidence satisfactory to the Division of active participation in a VRP conducted by the Department of Assistive and Rehabilitative Services (DARS) or a private vocational rehabilitation provider. Rule 130.101(8) defines VRP as any program, provided by DARS, a comparable federally-funded rehabilitation program in another state under the Rehabilitation Act of 1973, as amended, or a private provider of vocational rehabilitation services that is included in the Registry of Private Providers of Vocational Rehabilitation Services, for the provision of vocational rehabilitation services designed to assist the injured employee to return to work that includes a VRP. A VRP, also known as an Individualized Plan for Employment (IPE) at DARS, includes, at a minimum, an employment goal, any intermediate goals, a description of the services to be provided or arranged, the start and end dates of the described services, and the injured employee's responsibilities for the successful completion of the plan.

Rule 130.102(d)(1) provides that an injured employee demonstrates an active effort to obtain employment by meeting at least one or any combination of the following work search requirements each week during the entire qualifying period:

- (A) has returned to work in a position which is commensurate with the injured employee's ability to work;
- (B) has actively participated in a [VRP] as defined in [Rule] 130.101 of this title (relating to [d]efinitions);
- (C) has actively participated in work search efforts conducted through the Texas Workforce Commission (TWC);
- (D) has performed active work search efforts documented by job applications; or
- (E) has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work.

In evidence was a document titled "IPE for Extended Evaluation." The document does not identify an employment goal but rather states the claimant and DARS "jointly developed this program of services so that [the claimant's] eligibility for [v]ocational [r]ehabilitation services can be determined." The IPE notes that "[c]ounseling and [g]uidance" will be provided from January 13 through June 30, 2011; "WAT" training will be arranged and purchased from February 1 through June 30, 2011; "PSAT" training will be arranged and purchased from February 1 through June 30, 2011; and "[p]sychiatric [t]reatment" will be arranged as needed from January 13 through June 30, 2011. The following objectives were listed: register for psychiatric services, increase physical stamina, complete "PSAT" training, complete "WAT" training, maintain sobriety by continuing attending meetings of "NA/AA" twice a month, and improve ability to communicate. In evidence is a letter from DARS which states an IPE was developed and the claimant was actively participating from May 12 through August 10, 2011 (dates provided by the claimant and correspond to the SIBs qualifying period). Although the claimant testified she continued to attend required meetings and perform various activities requested by DARS, there is no documentation that the IPE was extended or covered the entire qualifying period.

In reviewing a "great weight" challenge, we must examine the entire record to determine if: (1) there is only "slight" evidence to support the finding; (2) the finding is so against the great weight and preponderance of the evidence as to be clearly wrong

and manifestly unjust; or (3) the great weight and preponderance of the evidence supports its nonexistence. See Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Under the facts as presented in this case, the hearing officer's finding that during the qualifying period for the 16th quarter the claimant demonstrated an active effort to obtain employment each week during the entire qualifying period by actively participating in a VRP as defined by Rule 130.101 is against the great weight and preponderance of the evidence. We cannot agree under the facts of this case that the claimant's IPE was extended beyond June 30, 2011, the last date services were provided, arranged, or purchased according to the terms of the IPE. Because the IPE ended June 30, 2011, the claimant must show she met at least one of the other criteria listed in Rule 130.102(d)(1) during the weeks of the qualifying period after June 30, 2011. There was no evidence that during the qualifying period the claimant returned to work in a position commensurate with her ability to work; actively participated in work search efforts conducted through TWC, performed an active work search documented by job applications; or had a total inability to work.

The hearing officer's finding that during the qualifying period for the 16th quarter the claimant demonstrated an active effort to obtain employment each week during the entire qualifying period by actively participating in a VRP as defined by Rule 130.101 is against the great weight and preponderance of the evidence. Accordingly, we reverse the hearing officer's decision that the claimant is entitled to SIBs for the 16th quarter and render a new decision that the claimant is not entitled to SIBs for the 16th quarter.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RON O. WRIGHT, PRESIDENT  
6210 EAST HIGHWAY 290  
AUSTIN, TEXAS 78723.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Cynthia A. Brown  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge